

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Airport

AGENDA DATE: October 25, 2011

CONTACT PERSON: Monica Lombraña 780-4724

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

Approve a resolution authorizing the City Manager to sign a Lessor's Approval of Sublease between the City of El Paso (Lessor), Cutter Aviation (Lessee) and TX DPS (Sublessee)

BACKGROUND / DISCUSSION:

Cutter Aviation has been a fixed base operator at El Paso International Airport since November 1, 1963, and the terms of the lease requires that the City approve any proposed subleases made by Cutter. Therefore by this document, the City/Airport will approve Cutter's sublease to TX DPS provided that Cutter is responsible for sublessee's compliance with the lease for office and hangar space to accommodate TX DPS's pilots and aircraft.

PRIOR COUNCIL ACTION:

Lessor's Approval of Subleases have been presented to Council on a regular basis. The last Sublease Agreement between Cutter and TX DPS was approved June 16, 2009

AMOUNT AND SOURCE OF FUNDING:

There will be no economic impact on airport funds

BOARD / COMMISSION ACTION:

N.A.

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



**Monica Lombraña, A.A.E.
Director of Aviation**

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign a Lessor's Approval of Sublease between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited Partnership ("Lessee") and the Texas Department of Public Safety ("Sublessee") regarding a portion of the premises located at 1771 Shuttle Columbia Drive, El Paso, Texas.

APPROVED this ____ day of _____ 2011.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombrana, A.A.E.
Director of Aviation

STATE OF TEXAS §
 § LESSOR'S APPROVAL OF SUBLEASE
COUNTY OF EL PASO §

THIS Lessor's Approval of Sublease is made and entered into by and between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited Partnership ("Lessee") and the Texas Department of Public Safety ("Sublessee"), effective the ____ day of _____, 2011.

WHEREAS, Lessor entered into a Fixed Base Operator's Lease and Operating Agreement effective November 1, 2003 as amended by the First Amendment dated February 22, 2005 (collectively referred to as the "Lease") covering the following described property:

A parcel of property known as Site 5, El Paso International Airport Tracts, Unit 11, El Paso, El Paso County, Texas containing 435,612.927 square feet of land and municipally known and numbered as 1771 Shuttle Columbia Drive, El Paso, Texas ("Premises").

WHEREAS, Lessee desires to sublease a portion of the Premises to Sublessee;

WHEREAS, Lease requires the prior written consent of the Lessor for a sublease of all or part of the Premises; and

WHEREAS, Lessor is willing to approve the proposed sublease subject to the terms and conditions set forth in this Lessor's Approval of Sublease, and accepted and agreed to by Lessee and Sublessee;

NOW, THEREFORE, in consideration of the mutual covenants of the parties, Lessor, Lessee, and Sublessee agree as follows:

1. **Acceptance of Lease Terms and Covenants.** Sublessee acknowledges that it has been provided with a copy of the Lease and agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **Lease Terms Conflicting with State or Federal laws.** To the extent any clause in this Lessor's Approval of Sublease or the Lease conflicts with the applicable Texas and/or United States law(s) or regulation(s), such clause is void and unenforceable. By executing an agreement which contains the conflicting clause(s), Sublessee makes no representations or warranties regarding the enforceability of such clause(s) and Sublessee does not waive the applicable Texas and /or United States law(s) or regulations(s) which conflict with the clauses(s).
3. **Subleased Premises.** Sublessee acknowledges that the subleased premises located at 1771 Shuttle Columbia Drive, El Paso, El Paso County, Texas are described as a 120 foot x 120 foot aircraft hangar space with 24 hour access which includes two (2) offices; pull in and out, 24 hour security and refueling of aircraft.

4. **Permitted Use of Premises.** Sublessee acknowledges that the subleased premises will not be used for any activity other than for an office and/or in support of Sublessee's aircraft that is stored in Lessee's hangar. Sublessee also acknowledges that its use of the subleased premises shall be further limited by those restrictions and prohibitions enumerated within the Lease.
5. **Proof of Insurance.** Sublessee is self insured.
6. **Reporting Requirements.** As additional consideration for Lessor's approval, Sublessee agrees that it shall furnish to Lessor, on or before the tenth (10th) day of each month, an accurate report of Sublessee's operations at the Airport during the preceding month. The report shall include, but not be limited to, any information related to the following: (i) the amount of cargo, freight, or mail loaded or off-loaded from any aircraft by Sublessee, its customers, contractors, or agents; and (ii) the type of aircraft and name of aircraft operator handled. Sublessee agrees to provide this information, if applicable, in such detail and on the form as prescribed by the Director of Aviation. Failure to comply with the reporting requirements may result in a revocation of the Lessor's consent to the sublease and termination of the Lessor's Approval of Sublease and the Sublease.
7. **Lessee's Obligations.** Notwithstanding any provision to the contrary in the Sublease, this Lessor's Approval of Sublease shall in no way release the Lessee or any person or entity claiming by, through, or under Lessee, including Sublessee, from any of its covenants, agreements, liabilities, and duties under the Lease, as same may be amended from time to time. Lessee shall remain liable to Lessor for any defaults under the Lease, whether such default is caused by Lessee or Sublessee or anyone claiming by or through either Lessee or Sublessee. The foregoing shall not be deemed to restrict or diminish any right which Lessor may have against Lessee or Sublessee, in law or in equity, for violation of the Lease.
8. **Purpose.** This Lessor's Approval of Sublease does not constitute approval by Lessor of any of the provisions of the Sublease document or agreement; nor shall the same be construed to amend the Lease in any respect. The sole purpose of the Sublease shall be to set forth the rights and obligations between Lessee and Sublessee. In no event, however, shall Lessor be deemed to be in privity of contract with Sublessee or owe any obligation or duty to Sublessee under the Lease or otherwise; any duties of Lessor under the Lease being in favor of, for the benefit of, and enforceable solely by Lessee.
9. **Non-Waiver.** Nothing herein shall be deemed a waiver of any of Lessor's rights under the Lease. This Lessor's Approval of Sublease does not end the need for Lessor's approval of any future subleases or for any other matter for which Lessor's approval is required under the Lease or otherwise.
10. **Subordinate Rights.** The Sublease is, in all aspects, subject and subordinated to the Lease as the same may be amended. The terms of the Lease shall prevail in the case of

any conflict between the provisions of the Lease, Sublease, or this Lessor's Approval of Sublease.

If, at any time prior to the expiration of the term of the Sublease, the Lease shall terminate or be terminated for any reason (or Lessee's right to possession shall terminate without termination of the Lease), this Lessor's Approval of Sublease and the Sublease shall simultaneously terminate.

11. **Authorized Parties.** The persons signing this Lessor's Approval of Sublease on behalf of the Lessee and Sublessee represent and warrant that they have the authority to legally bind the Lessee and Sublessee to the provisions of this instrument. Further, Lessee and Sublessee acknowledge and agree to be bound by all the terms and conditions of this Lessor's Approval of Sublease as set forth herein.

IN WITNESS WHEREOF, this Lessor's Approval of Sublease has been executed and shall be effective as of the date first noted above.


CITY OF EL PASO, TEXAS

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

ACKNOWLEDGMENT
LESSOR

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of _____ 2011, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso**.

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

**LESSEE: CUTTER AVIATION
EL PASO LIMITED PARTNERSHIP**

[Signature]
Printed Name: Scott Andre
Title: G.M.

ACKNOWLEDGMENT
LESSEE

THE STATE OF Texas)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 13th day of October, 2011, by Scott Andre as General Mgr of **Cutter Aviation El Paso Limited Partnership** (Lessee).



Ingrid M. Pool
Notary Public, State of TEXAS

My Commission Expires:
February 24, 2015

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

SUBLESSEE: TEXAS DEPARTMENT OF
PUBLIC SAFETY

J-Roland
Printed Name: JASON ROLAND
Title: Sergeant

ACKNOWLEDGMENT
SUBLESSEE

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

This instrument was acknowledged before me on this 11th day of October, 2011, by
Jason Roland as Sergeant of The **Texas Department of Public Safety**.



Ingrid M. Pool
Notary Public, State of Texas

My Commission Expires:
February 24, 2015